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APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Aylus Networks, Inc., a Delaware
corporation,

Plaintiff,

vs.

Apple Inc., a California corporation

Defendant.

CASE NO. 3:13-cv-4700-EMC

ESI STIPULATION AND [~~PROPOSED~~]
ORDER

1
2 Plaintiff Aylus Networks, Inc. (“Aylus”) and Defendant Apple Inc. (“Apple”), hereby
3 agree that the following procedures shall govern discovery of Electronically-Stored Information
4 (“ESI”) in this case.

5 This agreement is a voluntary agreement entered into by the parties. No delay in the
6 finalization of this agreement shall serve as a basis for any party to delay discovery, including but
7 not limited to delaying the production of documents.

8 1. **Custodian names and search terms to be exchanged for Electronic Mail.** The
9 parties have agreed to produce responsive documents to the other party’s discovery requests in
10 accordance with applicable federal rules, including, but not limited to search of corporate
11 databases and/or network resources, and search for responsive materials that are resident on third
12 party servers if such party has reasonable access to such materials (e.g., through a web portal).

13 However, General ESI production requests under Federal Rules of Civil Procedure 34 and
14 45 shall not include email or other forms of electronic correspondence (collectively “email”). To
15 obtain email, parties must propound specific email production requests. Email production
16 requests shall only be propounded for specific issues, rather than general discovery of a product
17 or business. Email production requests shall identify the custodian, search terms, and time frame,
18 if applicable. The parties shall cooperate to identify the proper custodians, proper search terms
19 and proper timeframe. Each requesting party shall limit its email production requests to a total of
20 five (5) custodians plus all individuals identified in a producing party’s Rule 26 disclosures. Rule
21 26 disclosure custodians will include all current and former employees listed on a party’s initial
22 disclosures, but a party’s obligation to produce email for a former employee will be limited to
23 what is in such Party’s custody. The parties may jointly agree to modify this limit without the
24 Court’s leave. The Court shall consider contested requests for additional custodians per producing
25 party, upon showing a distinct need based on the size, complexity, and issues of this specific case.
26 Should a party serve email production requests for additional custodians beyond the limits agreed
27 to by the parties or granted by the Court pursuant to this paragraph, the requesting party shall bear
28 all reasonable costs caused by such additional discovery. Each requesting party shall limit its
email production requests to a total of seven (7) search terms per custodian per party. The parties

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2 may jointly agree to modify this limit without the Court's leave. The Court shall consider
3 contested requests for additional search terms per custodian, upon showing a distinct need based
4 on the size, complexity, and issues of this specific case. The search terms shall be narrowly
5 tailored to particular issues. Indiscriminate terms, such as the producing company's name or its
6 product name are inappropriate unless combined with narrowing search criteria that sufficiently
7 reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g.,
8 "computer" and "system") narrows the search and shall count as a single search term. A
9 disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the
10 search, and thus each word or phrase shall count as a separate search term unless they are variants
11 of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged
12 to limit the production and shall be considered when determining whether to shift costs for
13 disproportionate discovery. Should a party serve email production requests with search terms
14 beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the
15 requesting party shall bear all reasonable costs caused by such additional discovery.

16 2. **Procedure Where Search Terms Would be Ineffectual.** For any document that,
17 based on a parties' reasonable belief, could be potentially discoverable but is not keyword
18 searchable, and cannot be made keyword searchable using OCR tools, the producing party will
19 conduct a reasonable "eyes-on" review to determine whether the document should be produced or
20 recorded on a privilege log as withheld.

21 3. **Format for production of documents – documents existing in electronic**
22 **format.** Except as otherwise provided for in this Stipulation, all documents existing in electronic
23 format shall be produced in accordance with the following:

24 A. Multiple page, searchable PDF format at a resolution of at least 300 dpi or
25 in single page TIFF format.

26 B. Documents (whether produced in TIFF or PDF) shall be produced along
27 with Concordance/Opticon image load files that indicate the beginning and ending of each
28 document.

C. Documents in Excel, MPEG, AVI, MOV, WMA and WAV format shall be produced in their native format. Excel files may be produced in accordance with paragraph 3(A) instead of native format if the document requires redaction and production in PDF or TIFF is required to support the redaction.

D. **Metadata.** Load files should include the following fields:

Name	Description
Begin Bates	Bates number on the first page of the produced document.
End Bates	Bates number on the last page of the produced document.
Begin Attach	First page of the first electronic file in a family (e.g., e-mail and attachments).
End Attach	Last page of the last electronic file in a family (e.g., e-mail and attachments).
Confidentiality-Designation	Confidentiality designation(s) of the produced document
To	Persons to whom an electronic message is addressed.
From	Sender of an electronic message
CC	Persons who received a copy of an electronic message
BCC	Persons who received a blind copy of an electronic message
Subject	Subject line from an electronic message.
Sent On Date-Time	Date and time the electronic message was sent. This field will only be populated for

Name	Description
	electronic files that were sent. Format MM/DD/YYYY HH:MM:SS
Received on Date-Time	Date and time the electronic message was received. This field will only be populated for electronic files that were sent. Format MM/DD/YYYY HH:MM:SS
Custodian	Name of the person who had custody or control over the file at the time of collection.
Author	Author of an electronic file.
Created Date-Time	Date and time the electronic file was created as it appears in the original media. Format MM/DD/YYYY HH:MM:SS
Modified Date-Time	Date and time the electronic file was last modified as it appears in the original media. Format MM/DD/YYYY HH:MM:SS
File Name	Name of the electronic file, as it existed on its original media.
File Path	Full file path of the electronic file as it existed on its original media.

The parties are not obligated to include metadata for any document that does not contain such metadata in the original, if it is not possible to automate the creation of metadata when the document is collected. The parties reserve their rights to object to any request for the creation of metadata for documents that do not contain metadata in the original.

E. Production media and encryption of productions. Unless otherwise agreed, the parties shall provide document productions in the following manner: The producing

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2 party shall provide the production data on FTP¹ (permissible for productions of 5 GB of data or
3 less), CDs, DVDs, or external hard drives, as appropriate. The producing party may encrypt the
4 production data using TrueCrypt encryption, and if encrypted, the producing party shall forward
5 the password to decrypt the production data separately from the CD, DVD, or external drive on
6 which the production data is saved.

7 F. **Address for productions:** Plaintiff Aylus designates the following
8 address for purposes of receiving documents produced in this case: William Cooper, Quinn
9 Emanuel Urquhart & Sullivan, LLP, 50 California Street, 22nd Floor
10 San Francisco, California 94111. Apple designates the following address for purposes of
11 receiving documents produced in this case: Erik R. Fuehrer, DLA Piper LLP (US), 2000
12 University Avenue, East Palo Alto, CA 94303. Parties may update their requested address for
13 service by providing written notice to all other parties.

14 4. **Format for production of documents – hardcopy or paper documents.** All
15 documents that are hardcopy or paper files shall be produced as multiple page, searchable PDF
16 format at a resolution of at least 300 dpi or in single page TIFF format.

17 5. **Source code.** This Stipulation does not govern the format for production of source
18 code, which shall be produced pursuant to the relevant provision of the Protective Order..

19 6. **Parent and child emails.** The parties shall produce email attachments
20 sequentially after the parent email.

21 7. **Requests for Native files.** The parties will meet and confer to discuss requests for
22 the production of files in native format, on a case-by-case basis. If the parties are unable to reach
23 agreement with regard to requests for additional documents in native-file format, the parties
24 reserve the right to seek relief from the Court. Documents produced natively shall be represented
25 in the set of imaged documents by a slip sheet indicating the production identification number and
26 confidentiality designation for the native file that is being produced.

27 ¹ A party that produces or serves any documents via FTP shall also produce and/or serve
28 those same documents, along with an appropriate production letter, on DVD, CD, or external
drive as appropriate, the next business day.

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2 8. **Databases.** Certain types of databases are dynamic in nature and will often
3 contain information that is neither relevant nor reasonably calculated to lead to the discovery of
4 admissible evidence. Thus, a party may opt to produce relevant and responsive information from
5 databases in an alternate form, such as a report or data table. These reports or data tables will be
6 produced in a static format. The parties agree to identify the specific databases, by name, that
7 contain the relevant and responsive information that parties produce. Each party reserves the
8 right to request the database, or other type of dynamic file, in its native format. The parties shall
9 meet and confer regarding such requests.

10 9. **Requests for hi-resolution or color documents.** The parties agree to respond to
11 reasonable and specific requests for the production of higher resolution or color images. Nothing
12 in this Stipulation shall preclude a producing party from objecting to such requests as
13 unreasonable in number, timing or scope, provided that a producing party shall not object if the
14 document as originally produced is illegible or difficult to read. The producing party shall have
15 the option of responding by producing a native-file version of the document. If a dispute arises
16 with regard to requests for higher resolution or color images, the parties will meet and confer in
17 good faith to try to resolve it.

18 10. **Foreign language documents.** All documents shall be produced in their original
19 language. Where a requested document exists in a foreign language and the producing party also
20 has an English-language version[s] of that document that it prepared prior to the filing of the
21 lawsuit, the producing party shall produce both the original document and all English-language
22 versions. In addition, if the producing party has a certified translation of a foreign-language
23 document that is being produced, (whether or not the translation is prepared for purposes of
24 litigation) the producing party shall produce both the original document and the certified
25 translation. Nothing in this agreement shall require a producing party to prepare a translation,
26 certified or otherwise, for foreign language documents that are produced in discovery, except that
27 any party seeking to rely upon a non-English document shall produce a certified English
28 translation of the portion(s) relied upon at the time it is relied upon or within thirty (30) days of
close of fact discovery, whichever is earlier.

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2 11. **Service.** In addition, Plaintiff Aylus Networks, Inc. and Defendant Apple Inc.
3 hereby stipulate and agree as follows:

4 The parties agree that all documents to be served by and between them shall be
5 served by electronic means, and for purposes of computation of time, such service shall be
6 considered the same as if it were hand delivered. This service shall be made by electronic mail,
7 with the documents to be served attached in PDF or single page TIFF format, except when the
8 size of the file containing any such document exceeds 15 MB, in which case service will be made
9 by FTP file transfer² or some form of electronic media (*i.e.* CD, DVD or Hard Drive). Discovery
10 requests should be served by electronic mail, with the requests served in both PDF and native
11 word format. Electronic signatures are deemed the same as hand-written signatures.

12 13. **Privilege Logs.** Pursuant to Rule 26 of the Federal Rules of Civil Procedure, the
13 parties agree to provide a privilege log for each document withheld or redacted, whether or not
14 that document constitutes ESI. The parties are not required to log Privileged Materials dated after
15 October 9, 2013 (the “cut-off date”). Information concerning documents or things otherwise
16 protected by the attorney-client privilege, work product immunity or other privilege or protection
17 (“Privileged Materials”) that were created after the cut-off date do not need to be included on any
18 privilege log. In addition, Privileged Materials created by or on behalf of litigation counsel or
19 exchanged with litigation counsel, do not need to be included on any privilege log. This does not
20 include materials prepared by or on behalf of the law firms representing the parties in their
21 capacity as prosecution counsel.

22 The parties agree that privileged email chains/strings (*i.e.*, forwarded and replied to emails
23 containing an earlier email or emails) can be logged as one entry provided that information
24 sufficient to challenge the claim of privilege will be provided in the privilege log and non-
25 privileged portions of email chains will be produced. Privileged documents between prosecution
26 counsel and patent applicants that forward patent office filings, or provide notice of events in the

27 ² A party that produces or serves any documents via FTP shall also produce and/or serve
28 those same documents, along with an appropriate production letter, on DVD, CD, or external
drive as appropriate, the next business day.

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2 patent office, can be categorically logged provided that information sufficient to challenge the
3 claim of privilege is provided in the privilege log.

4 The parties agree that they will provide at least the following fields in their respective
5 privilege logs:

- 6 • Date of the document or date (and time if available of an email being sent);
- 7 • Subject matter of the document or email;
- 8 • Sender or author of the document or email;
- 9 • All recipients of the document or email (*e.g.*, "to," "carbon copied (cc)," and "blind
10 carbon copied ("bc" or "bcc");
- 11 • The asserted privilege or protection (*e.g.* attorney-client communication, attorney
12 work product, common interest privilege, or other appropriate privilege); and
- 13 • The basis or applicability of such privilege or protection (*e.g.*, communication to
14 attorney seeking legal advice regarding litigation).

15 The parties will produce initial privilege logs not later than sixty days after production of
16 responsive documents from which the Privileged Materials were redacted or withheld from
17 production. The parties will produce an updated privilege log periodically as additional
18 documents are produced. The parties must have completed their review and produced all
19 applicable privilege logs by no later than two weeks after the close of fact discovery.

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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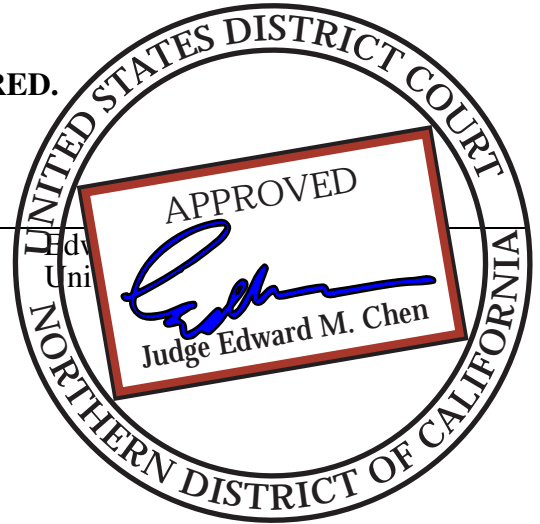
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2 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

3
4 Dated: 4/7/14 _____

By: _____



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2 **ATTESTATION CLAUSE**

3 I, William O. Cooper, am the ECF User whose identification and password are being used
4 to file this ESI Stipulation and [Proposed] Order. In compliance with Civil Rule 5-1(i)(3), I
5 hereby attest that Erik R. Fuehrer has concurred in this filing.
6

7 Dated: April 6, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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10 By: /s/ William O. Cooper
11 WILLIAM O. COOPER
12 Attorneys for Plaintiff,
13 Aylus Networks, Inc
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